



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 27, 2007

MINUTE NO. 2 – Exceptional State Waters-Hazel River

Alan Pollock, manager of the Office of Water Quality Programs, described previous staff appearances before the Board on this issue and summarized the public comments received on the Notice of Intended Regulatory Action to designate portions of the Hazel River as an Exceptional State Water.

Mr. Pollock then advised the Board of two issues raised during the comment period about the suitability of the Culpeper segment of the Hazel River for designation that had led staff to conclude that designation of the Culpeper county section should not move forward at this time.

The first issue is opposition from several riparian property owners with King's Grant rights who are very concerned that designating the Hazel River in Culpeper County would attract trespassers to their properties.

The second issue is that almost half of the Culpeper County segment is listed as impaired due to bacteria. Staff questions whether a water should be designated as a Exceptional State Water solely based upon recreational opportunities if it does not support the primary contact recreational use due to the bacteria impairment. The Department has submitted a TMDL report to the Environmental Protection Agency for the bacteria impairment and will work with other agencies and citizens to identify and implement the specific management actions needed to restore the waters so they support full recreational use. The majority of riparian property owners who indicated support for the designation are located along the river segment that is impaired. Mr. Pollock indicated it was staff's hope that these citizens, along with others in the watershed who supported the designation, would also support and participate in the clean up actions needed to restore the river.

Mr. Pollock advised the Board that based upon these issues and public comment staff had concluded the Exceptional State Waters rulemaking process should move forward only for the Hazel River segment located within the Shenandoah National Park. Since it was expected to be a non-controversial action, it could be handled through the Fast Track rulemaking process. The segment within Culpeper County could be reconsidered at a later time.

Board Decision:

Based on the briefing materials, the staff presentation, and Board discussion, the Board approved the following recommendations by unanimous vote:

1. Withdraw the NOIRA for the Hazel River that was published in the Virginia Register on February 19, 2007.
2. (a) That the Board authorize the Department to promulgate the proposed amendment to designate as Exceptional State Waters the Hazel River in Rappahannock County from its headwaters to the first downstream crossing with the Shenandoah National Park boundary and all tributaries within this segment within the confines of Shenandoah National Park for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization should also be understood to constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

(b) That the Board authorize the Department to set an effective date effective upon filing notice of Environmental Protection Agency approval with the Registrar of Regulations after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.

(c) Should the proposal fail to complete the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act or changes to the proposal be needed, it is recommended that the Board authorize the Director to make the decision under 9 VAC 25-10-30.C. concerning the use of the participatory approach or alternatives.
3. Direct staff to reinitiate the designation process for the Culpeper County segment of the Hazel River after sufficient restoration work has progressed to reduce the bacteria contamination and to work with local citizens to address riparian landowner concerns.
4. Direct staff to investigate with the Attorney General's office the extent that King's Grant property rights impose restrictions on actions of the State Water Control Board and the public.

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